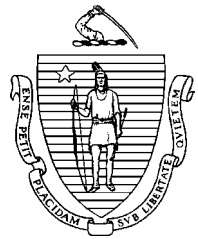




# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 703

IN THE MATTER  
OF  
MICHAEL H. ROTONDI

## DISPOSITION AGREEMENT

The State Ethics Commission and Michael Rotondi enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On August 14, 2003, pursuant to G.L. c. 268B, § 4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Rotondi. The Commission has concluded its inquiry and, on October 7, 2003, found reasonable cause to believe that Rotondi violated G.L. c. 268A, § 19.

The Commission and Rotondi now agree to the following findings of fact and conclusions of law:

### **- Findings of Fact -**

1. Rotondi has served as the elected Stoneham town moderator since 1993 receiving a salary of no more than \$200 a year. Rotondi is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).
2. In April 2003, Rotondi approached the town retirement board seeking enrollment in the town pension system. Enrollment in the town pension system would have had significant financial benefits for Rotondi including potential health insurance and pension benefits.
3. In April 2003, the town retirement board informed Rotondi that he did not qualify for enrollment in the town pension system because he was a part-time employee and his salary did not exceed \$200 a year. Rotondi disagreed with the town retirement board's decision, arguing that he was entitled as an elected official to enroll in the retirement system. Rotondi told the town retirement board that he had spoken with the state Public Employee Retirement Administration Commission's counsel who informed Rotondi that he was entitled to enroll in the retirement system as an elected official regardless of the amount of compensation he received. In addition, Rotondi also argued that his compensation exceeded \$200 when taking into consideration health care benefits. The town retirement board denied Rotondi's request to change its ruling.
4. After the town retirement board declined to change its ruling, Rotondi sought to increase his salary to \$205 at Town Meeting. Rotondi as town moderator asked the town administrator to change the warrant for the May 5, 2003 Town Meeting so as to authorize a transfer of \$5 from the town moderator's operational account to the town moderator's salary account, which the town administrator subsequently did. The town administrator also hand-altered the relevant motion on the warrant article for the May 5, 2003 Town Meeting increasing the moderator's salary from \$200 to \$205.

5. Rotondi presided over the May 5, 2003 Town Meeting.

6. Town Meeting members questioned the \$5 increase in Rotondi's compensation. From the podium, Rotondi stated that the \$5 increase was a clerical accounting matter. Rotondi did not explain the effects of the \$5 salary increase or his reason for seeking it. The article, with the \$5 increase for town moderator, passed.

7. Rotondi maintains that it was his intention to respond to the selectman presenting the motion who looked to Rotondi for clarification. It was not Rotondi's intention to respond to the Town Meeting member asking the question or to the Town Meeting as a whole. In retrospect, Rotondi understands that Town Meeting members would have viewed his response as a direct answer to the question.

8. Town Meeting members who felt misled by Rotondi's response at the May 5, 2003 meeting and were not aware of the ramifications of the \$5 increase when they voted on the increase to the town moderator's salary, started a petition drive. They collected 200 signatures in order to convene a special Town Meeting to rescind the \$5 raise.

9. At the July 28, 2003 Town Meeting, by a 2/3 voice vote, the Town Meeting members present and voting rescinded the \$5 increase to the moderator's salary.<sup>1</sup>

10. The town retirement board met on July 29, 2003 and denied Rotondi's request to be enrolled into the town pension system.

#### **- Conclusions of Law -**

11. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2</sup> as such an employee in a particular matter<sup>3</sup> in which, to his knowledge, he has a financial interest.<sup>4</sup>

12. As town moderator, Rotondi is a municipal employee pursuant to G.L. c. 268A, § 1.

13. Town Meeting's decision to increase the town moderator's salary was a particular matter.

14. Rotondi participated in that particular matter by presiding over the decision as town moderator and by answering from the podium a significant question about the proposed salary increase.

15. Where as moderator Rotondi would receive the \$5 increase to his salary, and where such increase would make Rotondi eligible for enrollment in the town pension system, Rotondi had a financial interest in the particular matter, and he knew of his financial interest when he so participated.

16. Accordingly, by so participating in the particular matter concerning his compensation, Rotondi violated § 19.

#### **- Resolution -**

In view of the foregoing violation of G.L. c. 268A by Rotondi, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rotondi:

- (1) that Rotondi pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Rotondi waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** February 15, 2005

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<sup>1</sup>Rotondi did not moderate the July 28, 2003 special Town Meeting.

<sup>2</sup>“Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>3</sup>“Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>4</sup>“Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.